IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2007

CORAM

THE HONOURABLE MR. JUSTICE K.N. BASHA

Criminal Original Petition No.24049 of 2004
and Crl.M.P.No.7791 of 2004

Mrs.N.Lakshmi .. Petitioner

-Vs.-

M/s. M.R.P.Finance
represented by its Manager/
P.A. Holder Mr. R.Palanisamy
Having Office at No.4/488
M.R.P.Complex, Palladam Road,
Tirupur - 641 605 .. Respondent

Prayer:- Criminal Original Petition filed under Section 482 of the Criminal Procedure Code to call for the records and quash, on the file of the Judicial Magistrate No.I, Tiruppur in C.C.No.233 of 2001.

For Petitioner : Mr. R.Karthikeyan.
For Respondent : Mr. G.Karthikeyan.

O R D E R

Mr. R.Karthikeyan, learned counsel for the petitioner submitted that the petitioner has been arrayed as third accused in the proceedings initiated against the petitioner along with two other accused by the respondent/complainant for the offence under Section 138 of the Negotiable Instruments Act (hereinafter referred to as "the Act").

2. It is contended by the learned counsel for the petitioner that the petitioner is only one of the partners in the Firm, namely, the first accused and the petitioner is absolutely nothing to do with the alleged offence. Learned counsel for the petitioner further contended that the petitioner is neither incharge nor responsible for the conduct of the business affairs of the first accused-Firm.

3. Learned counsel for the petitioner further contended that even the disputed cheque, in this case, is said to have been issued only by the

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second accused and not by the petitioner herein, who has been arrayed as third accused. Learned counsel for the petitioner submitted that except mentioning a bald allegation to the effect that the petitioner being one of the partners responsible for the conduct and day-to-day affairs of the said Firm, there is absolutely no other specific and definite allegation levelled against the petitioner mentioning the specific role said to have been played by the petitioner in respect of the day-to-day affairs of the Firm-the first accused.

4. Learned counsel for the petitioner placed reliance on the decision of the Honourable Supreme Court in the case of Katta Sujatha Vs. Fertilizers & Chemicals Travancore Limited and reported in 2002 (7) S.C.C. 655 to the proposition that initiating proceedings against a particular partner under Section 138 of the Act, without specifically attributing any particular Act, such complaint is not maintainable against that particular partner.

5. Per contra, Mr. G.Karthikeyan, learned counsel for the respondent herein submitted that there is a specific allegation mentioned in the complaint itself to the effect that the petitioner, who has been arrayed as third accused along with second accused, being the partners, both of them are responsible for the conduct and day-to-day affairs of the said Firm. Therefore, it is contended by the learned counsel for the respondent that there is absolutely no ground made out for quashing the proceedings initiated against the petitioner by the respondent/complainant herein for the offence under Section 138 of the Act.

6. I have carefully considered the rival contentions put forward by the learned counsel on either side and also perused the quashing petition and as well as the complaint copy of this case. A perusal of the complaint copy discloses that there is a bald and vague allegation levelled against the petitioner herein, who has been arrayed as third accused to the effect that the petitioner and the second accused, who are the partners of the first accused-Partnership Firm, are responsible and incharge of the conduct and business affairs of the Firm. Except this bald and vague allegation, there is absolutely no allegation whatsoever levelled against the petitioner herein, who has been arrayed as third accused in this case. It is also seen from the complaint that only the second accused is said to have issued the cheque on behalf of the first accused-Firm and there is also absolutely no mention about the petitioner having knowledge about the issuance of disputed cheque in this case.

7. Learned counsel for the petitioner rightly placed reliance on the decision of the Honourable Supreme Court reported in 2002 (7) S.C.C. 655 and in that case, the Apex Court has held that the complaint filed against a person, namely one of the partners for the offence under Section 138 of the Act without mentioning any specific allegation in the complaint that the said partner was incharge and responsible for the conduct of the business of the Firm and with further allegation that the said offence was

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committed with her consent or connivance or that the same was attributable to any neglect on her part in the matter of issuance of the cheque and in such circumstances, no case made out against the said partner and the complaint is not maintainable against her.

8. It is also pertinent to note that Provision under Section 141 of Act which reads,

> "141. Offences by Companies – (1) If the person committing an offence under Section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly;
>
> Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence.
>
> Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.
>
> (2) Notwithstanding anything contained in the sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also he deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly."

9. The Hon'ble Supreme Court in yet another decision in the case in SARJO KUMAR PODDAR V. STATE (NCT OF DELHI) reported in 2007 (1) CTC 529 that,

> "12. A person would be vicariously liable for commission of an offence on the part of a Company only in the event the conditions precedent laid down therefore in Section 141 of the Act stand satisfied. For the aforementioned purpose, a strict construction would be necessary.

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13. The purported averments which have been made in the Complaint Petitions so as to make the appellant vicariously liable for the offence committed by the Company read as under :

> "That the accused No.1 is a public limited company incorporated and registered under the Companies Act, 1956, and the accused No.2 to 8 are/were its Directors at the relevant time and the said company is managed by the Board of Directors and they are responsible for the in-charge of the conduct and business of the company-Accused No.1. However, cheques referred to in the complaint have been signed by the Accused No.3 and 8, i.e., Shri.K.K.Pilania & Sri.N.K.Munjal for and on behalf of the accused company No.1."

14. Apart from the company and the appellant, as noticed hereinbefore, the Managing Director and all other directors were also made accused. The appellant did not issue any cheque. He, as noticed hereinbefore, had resigned from the Directorship of the company. It may be true that as to exactly on what date the said resignation was accepted by the company is not known, but, even otherwise, there is no averment in the Complaint Petitions as to how and in what manner the appellant was responsible for the conduct of the business of the company or otherwise responsible to it in regard to its functioning. He had not issued any cheque. How he is responsible for dishonour of the cheque has not been stated. The allegations made in paragraphe 3 thus, in our opinion do not satisfy the requirements of Section 141 of the Act.

15. Our attention, however, has been drawn to the averments made in paragraphs 7 and 10 of the Complaint Petition, but on a perusal thereof, it would appear that therein merely allegations have been made that the cheques in question were presented before the bank and they have been dishonoured. Allegations to satisfy the requirements of Section 138 of the Act might have been made in the Complaint Petition but the same principally relate to the purported offence made by the Company. With a view to make a Director of a Company vicariously liable for the acts of the Company, it was obligatory on the part of the complainant to make specific allegations as are required in law.

10. The principle of law laid down by the Hon'ble Apex Court in the decision cited supra, is squarely applicable to the instant case. In the above said decision of the Hon'ble Apex Court has held that the appellant is one of the Directors of the company and in the complaint it is stated that the accused 2 to 8 are/were its Directors at the relevant time and the said company is managed by the Board of Directors and they are

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responsible for the in-charge of the conduct and business of the company-accused No.1 and the cheques referred in the complaint have been signed by A-3 and A-8 on behalf of the company-accused No.1. In this case also, it is stated that the petitioner who has been arrayed as A-3 is one of the partners of the first accused firm. It is also generally stated in the complaint that,

> "the accused No.2 and 3 are partners and responsible persons for the contact and day-to-day affairs of the said firm."

It is also specifically mentioned in the complaint that the accused No.2 only borrowed a sum of Rs.6,50,000/- from the complainant and further he has also executed a promissory note in favour of the complainant agreeing to repay the amount with interest. It is further specifically mentioned that accused No.2 has issued the disputed dishonoured cheque in favour of the complainant on behalf of accused No.1. Therefore, it is crystal clear that except making a bald and vague allegation that accused Nos.2 and 3 are the partners who are responsible for the conduct and day-to-day affairs of the said firm, there is absolutely no specific and definite allegation to the effect as to what role has been played by the petitioner herein who has been arrayed as A-3 and also no specific allegation that the disputed cheque was issued with the consent and knowledge of the petitioner, A-3.

11. The Hon'ble Supreme Court, in yet another earlier decision in SABITHA RAMAMURTHY AND ANOTHER VS. R.B.S.CHANNABASAVARADHYA reported in 2006 (4) CTC 684, has held that,

> "… Section 141 raises a legal fiction. By reason of the said provision, a person although is not personally liable for commission of such an offence would be vicariously liable therefor. Such vicarious liability can be inferred so far as a company registered or incorporated under the Companies Act, 1956 is concerned only if the requisite statements, which are required to be averred in the Complaint Petition, are made so as to make the accused therein vicariously liable for the offenc committed by the company. Before a person can be made vicariously liable, strict compliance of the statutory requirements would be insisted…"

12. For the aforementioned reasons, this Court has no other option but to hold that the allegations made in the complaint even if are taken to be correct in their entirety do not disclose any offence as against the petitioner herein and as such the proceedings initiated against the petitioner in C.C.No.233 of 2001 on the file of the Judicial Magistrate No.I, Tiruppur, is liable to be quashed as far as this petitioner is concerned and the same is quashed. The Learned Judicial

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Magistrate No.I, Tiruppur, is directed to expedite the trial as expeditiously as possible and more particularly within a period of four months from the date of receipt of a copy of this Order. This Criminal Original Petition is allowed. Consequently, the connected Criminal Miscellaneous Petition is closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

gg/srk

To

1. The Judicial Magistrate No.I, Tiruppur
2. -Do-Thro' The Chief Judicial Magistrate,
   Coimbatore.

1 cc To Mr.R.Karthikeyan, Advocate, SR.8930.
1 cc To Mr.G.Karthikeyan, Advocate, SR.8896.

Crl.O.P.No.24049 of 2004 and
Crl.M.P.No.7791 of 2004

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